* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **CRL.M.C. 792/2005**

Reserved on 17th April, 2007
Delivered on 17th May, 2007

ASHOK KUMAR ..... Petitioner
Through Mr. Pratap Shankar, Advocate

versus

SHIV BHAGWAN ..... Respondent
Through Mr. Anil Goel, Mr. Avinash Dadhich, Advocate

CORAM:
Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? yes
2. To be referred to the Reporter or not? yes
3. Whether the judgment should be reported in the Digest? yes

Mr. Justice S. Ravindra Bhat:

1. This is a petition under Section 482 for quashing of criminal proceedings filed by the respondent/complainant.

2. Briefly the facts are that that the complainant claimed that the petitioner was known to him. Both the parties are empanelled contractors with the Municipal Corporation of Delhi (MCD). The complainant's version is that the petitioner approached him in 1999, painting a rosy picture and holding out that he had

secured work order at Division 16, from the Executive Engineer, MCD for execution of works during a particular period. It was further alleged that the accused led the complainant to believe that he was unable to execute the work despite lapse of considerable period as he had insufficient finance, and lacked experience. It was alleged that the petitioner told him that default in execution would entail a great loss of goodwill, besides monetary loss, and therefore sought his help.

3. It was alleged that the complainant, a registered contractor of MCD with 20 years standing, believed the assurances and representation of the accused, requested his friend Mr. Rameshwar Poddar, also a registered contractor with MCD, to execute the works of accused alongwith the complainant. The accused assured them payment of Rs. 1 lakh for the execution of the works. It was alleged that the complainant and Shri Poddar purchased materials, paid hire charges for bitumen boiler, mixture plant, road roller, etc, besides cash of Rs. 2,25,000/-, which was given to the petitioner accused, for purchase of bitumen. It was alleged that the accused petitioner performed the work, and received the money from MCD yet, he did not return the amount to the complainant, who was given lame excuses. It was alleged that the petitioner accused, after being asked to return the monies, made a false complaint, and issued legal notice; later on 16.3.1999, the

complainant was threatened by four persons, with a knife. On these allegations, the complainant was filed.

4. The trial court, after considering the evidence led on behalf of the complainant, issued process, on the opinion that a *prima facie* case under Section 420/506 IPC was made out, on 22-7-2002. The entire criminal proceedings have been impugned, as *mala fide.* Counsel for the petitioner urged that the proceedings were nothing but harassment of the petitioner. He relied upon the previous order of the magistrate in 1999, to say that the complainant had made an attempt to get the payment to the petitioner stalled; the court, after considering the submissions, and the materials, declined to take any action. Therefore, issuance of process in 2002, and prolonged continuation of the proceedings has led to failure of justice. It was contended that the dispute, if any is of a civil character.

5. Learned counsel urged that the petitioner had bid for works, as also the complainant. Since the rates offered by the former were competitive, he was awarded the contract. The complainant had no involvement in the execution of the work; even the evidence relied upon, of the official witnesses, who were summoned by the court, i.e employees of MCD, showed that the complainant had at no stage been involved in the execution of the contract, or any part of it. Therefore, issuance of process, and continuation of the criminal proceedings, was

abuse of judicial process.

6. Learned counsel relied upon the judgments of the Supreme Court, reported as *M/s Zandu Pharmaceuticals -vs- Mohd. Sharaful Haque* 2005(111) CRLJ -92 - (SC) and stated that the court should exercise its jurisdiction and quash proceedings, if it is satisfied that the complainant has abused the judicial process, or the proceedings are barred, or the complainant has approached the courts with unclean hands. He also relied upon the judgment of the Supreme Court reported as *G. Sagar Suri -vs- State of UP* 2000 (2) SCC 636 to say that if the dispute is of a civil nature, and certain allegations are levelled with a view to lend a cloak of criminality, the court can exercise its inherent jurisdiction and quash the proceedings. It was submitted that the facts taken as a whole, nowhere establish the offences alleged; no particulars as to how, and when amounts were allegedly paid, were deposed; the complainant was an income tax payee, and could not substantiate his allegations. Further, the evidence of witnesses relied upon by him, did not support his case.

7. The respondent complainant opposed the petition. It was urged on his behalf that on account of inducement by the petitioner, Mr. Ramesh Poddar purchased materials from the supplier Mr. Ranjeet Singh Rana for Rs. 2,62,000/-; materials to that effect had been shown to the trial court; the complainant paid hire

charges for bitumen boiler, and other items, to the extent of Rs. 99, 000/-. The sum of Rs. 2,25,000/- was also paid in cash to the accused for the purchase of Bitumen, due to his request, when he induced the complainant that the bill can be prepared only in the name of the registered contractor to whom the work order was awarded. It was alleged that the accused received the amounts from the MCD, but deceived the complainant and withheld the payment of Rs. 6,88,000/-, and later, made baseless allegations. To cap it, the petitioner intimidated the complainant on 16.3.1999.

8. Counsel urged that the court issued process, and could also consider whether the allegations about the petitioner having caused loss to the MCD, which was a specific charge mentioned in the complaint, were to be examined. It was urged that the petitioner placed forged and fabricated receipts of having used bitumen, which had been *prima facie* shown to be false by the evidence of the officer from Indian Oil Corporation. It was urged that the petitioner could not claim the equitable order of quashing of criminal proceeding. Learned counsel urged that the fact that the complainant and Shri Poddar were contractors, and business rivals of the petitioner, or that they had bid for the same tender, were inconsequential and irrelevant.

9. The facts narrated show that both the petitioner and the complainant were,

at the relevant time, empanelled MCD contractors; the petitioner apparently was successful in securing a contract in Division 16, the complainant was not. The version of the latter is that the petitioner was in dire need of funds, and approached him for assistance, with a promise to pay 18% per annum. This induced the complainant to pay some amounts, and arrange for the purchase of various items, for execution of the work. According to him, Shri Poddar was instrumental in getting some funds; the rest were deployed by him.

10. The records of the trial court were requisitioned. Curiously, in the pre-summoning evidence, led before the court, the entire emphasis of the complainant was to urge that the receipts for bitumen, on record of the MCD, were not genuine; several officers, including Assistant Engineers, an Executive Engineer, an officer of the Vigilance Branch, etc, as well as an official of the Indian Oil Corporation were examined for the purpose. However, that evidence was found insufficient for proceeding on those allegations. Interestingly, though he mentioned in the complaint, and his deposition about money having been given to the petitioner, no particulars, or details, as to dates, amounts paid, and break up, were furnished. Importantly, the allegation of involvement of Shri Rameshwar Poddar were made blandly; that individual was not examined. Similarly, no documents to connect the materials said to have been purchased by the complainant, with execution of

contract by the petitioner, were placed on record. The complainant did not show any shred of evidence about the payment of money, or settlement of suppliers' bills by him. Apart from his deposition, no attempt to say who allegedly threatened him on 16-3-1999 was made. All this is relevant, because contemporaneously, or simultaneously, the petitioner had admittedly complained to the police about alleged misbehaviour of the complainant.

11. The above discussion shows that even though the petitioner relied upon deposition of 10 witnesses, none save his testimony supported any allegation levelled in the complaint, regarding cheating. In the absence of any specific details, or even the deposition of one witness, the inference which would logically arise is that the complainant, an unsuccessful rival bidder, sought to settle scores with the petitioner for having secured the contract. It is unreasonable, in the normal course of human conduct to expect a rival to advance huge amounts, or finance the execution of a contract, without insisting upon some security, or even reducing the understanding for finance (assuming there to be one) in some rudimentary form in writing. The absence of any corroboration, and levelling of blanket as well as general allegations, further strengthens the inference that the complainant at best seeks to achieve his objectives which may be in the nature of a civil dispute, by giving them the colour of criminality.

12. In *Indian Oil Corporation -vs- NEPC* AIR 2006 SC 2780, the Supreme Court considered the question of recourse to Section 482, where the complainant has settlement of civil disputes in mind, and restated the law, in the following terms:

> *"The principles, relevant to our purpose are:*
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> *(9) (i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.*
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> *For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint is warranted while examining prayer for quashing of a complaint.*
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> *(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.*
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> *(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.*
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> *(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.*
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> *(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal*

offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

10. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is Page obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which, do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged. In G. Sagar Suri v. State of UP 2002 (2) SCC 636 this Court observed:

"It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in taw. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.

While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law..."

13. On a proper application of the ratio of the above decision, the conclusion necessarily is that the complainant is seeking recourse to the criminal law mechanism to settle his civil grievances, which have to be resolved by filing an appropriate claim in accordance with law. The nature of allegations and the kind of evidence point to his contriving and presenting facts that are not believable, and at any rate, are inherently improbable. For these reasons, the petition has to succeed; it is accordingly allowed. Accordingly complaint case No. 2159/1999 (Shiv Bhagwan -vs- Ashok Kumar) and all further proceedings are hereby quashed. In the circumstances of this case, there shall be no order as to costs.

S.RAVINDRA BHAT, J

MAY 17, 2007
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